

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GARY L. SELLS

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Appeal No. 96-3745  
Application 08/269,916<sup>1</sup>

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ON BRIEF

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Before COHEN, MEISTER and CRAWFORD, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3 and 12.<sup>2</sup> Claims 14, 15, and 26 through 29 stand allowed.

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<sup>1</sup>Application for patent filed June 30, 1994.

<sup>2</sup>We note the examiner's statement on page 1 of the answer (Paper No. 7) of the conditions incident to the allowability of claim 3.

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Claims 2, 4 through 11, and 16 through 25, the only other  
claims

remaining in the application, stand withdrawn from  
consideration pursuant to 37 CFR 1.142(b).

Appellant's invention pertains to a ventilating device  
for a roof. An understanding of the invention can be derived  
from a reading of exemplary claim 1, a copy of which appears  
in "EXHIBIT A" appended to the main brief (Paper No. 6).

As evidence of obviousness, the examiner has applied the  
documents listed below:

Garries et al. 13, 1990 (Garries)	4,899,647	Feb.
Sells	5,092,225	Mar. 03, 1992

The following rejections are before us for review.

Claims 1, 3, and 12 stand rejected under 35 U.S.C. § 112,  
second paragraph, as being indefinite.

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Claims 1 and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sells in view of Garries.<sup>3</sup>

The text of the examiner's rejections and response to the argument presented by appellant appears in the final rejection and answer (Paper Nos. 4 and 7), while the statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 6 and 9).

#### OPINION

In reaching our conclusion on the issues raised on appeal, this panel of the board has carefully considered appellant's specification and claims, the applied patents,<sup>4</sup> and the respective viewpoints of appellant and the examiner.

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<sup>3</sup>The final rejection of claim 3 on this same ground was withdrawn by the examiner in the answer (pages 6 and 7).

<sup>4</sup>In our evaluation of the applied patents, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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As a consequence of our review, we make the determinations which follow.

The indefiniteness issue

We reverse the examiner's rejection of claims 1, 3, and 12 under 35 U.S.C. § 112, second paragraph.

We certainly understand the examiner's point of view as regards the presence of informalities in the claims. However, we

do not view the specified informalities as being of such character as to prevent the claimed subject matter from being understood, when read in light of the underlying disclosure. More specifically, while "said ridge board" (claim 1, lines 3 and 9) is inconsistent with the earlier recited "ridge member" (claim 1, line 1), it is apparent that these recitations address the same disclosed element. Further, read in light of the underlying disclosure, it is apparent that the content of claim 12 further defines the earlier recited "vent parts" of the cover (claim 1, line 5). While inconsistent, it is also

apparent that "said cover plate" (claim 12, lines 5 and 6) and the earlier recited "a cap plate" (claim 12, line 3) address the same component. As to the asserted confusion between "a cap plate" (claim 12, line 3) and the "cover" of claim 1, we understand the specified cap plate as a component of the cover. In light of the above, we determine that the metes and bounds of appellant's invention are determinable, notwithstanding claim informalities therein.<sup>5</sup>

The obviousness issue

We affirm the rejection of claims 1 and 12 under 35 U.S.C. § 103.

Claim 1 is drawn to a ventilating device for a roof having a longitudinally extending ridge member supported by transversely spaced inclined rafters, with a vent opening in the roof extending longitudinally along the ridge member, the

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<sup>5</sup>It is expected that the noted informalities will be rectified during any further prosecution before the examiner.

ventilating device including a cover for the vent opening, the cover including a pair of longitudinally extending vent parts defining a plurality of vent passages. The device further includes an elongated, longitudinally extending moveable member movable between an inactive position permitting communication through the passages and an active position closing the passages in response to wind in excess of predetermined ambient wind speed.

Dependent claim 12 sets forth, *inter alia*, that the cover includes a sheet of perforated material, with longitudinally extending perforated side walls cooperating with a roof and a cover plate to define compartments within one of which the movable member is movable to engage one of the side walls.

The patent to Sells (Figures 1 and 3) is representative of the knowledge in the art, at the time of appellant's invention, of ridge vents for a roof.<sup>6</sup> More specifically,

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<sup>6</sup>Appellant has made it clear (specification, pages 1 and 4) that a roof ventilating device including a pair of vent parts was known in the art when

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Sells teaches baffles 22 (perforated with air flow holes 24) interposed between a cover plate 20 and a roof, and defining compartments therewith as depicted.

The Garries patent discloses a ventilator system for a building attic. While the patentee in the preferred form of the invention provides a ventilator system at one or both ends of a roof gable, it is expressly indicated (column 4, lines 58 through 60) that

the same principles are equally applicable to cupolas and ridge vent type ventilator systems used to vent the ridgeline of a roof.

In particular, Garries teaches (column 2, lines 20 through 31, and column 7, lines 20 through 35) those having ordinary skill in the ventilator art to include a flapper valve 55 in an air passage to prevent water blow-through under higher than normal

wind conditions or when the ventilator is subjected to high wind gusts.

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the application was filed; U.S. Patent No. 3,949,657).

Applying the test for obviousness,<sup>7</sup> we conclude that it would have been obvious to one having ordinary skill in the art, from a combined assessment of the applied prior art, to provide a known ridge vent with flapper valves. It is clear to this panel of the board that the incentive on the part of one having ordinary skill in the art for making this modification would have simply been to gain the expected benefit of same, i.e., the well known benefit of preventing the entry of water under higher than normal wind conditions. For these reasons, we determine that claims 1 and 12 are unpatentable under 35 U.S.C. § 103.

The argument presented by appellant does not persuade us that the content of claims 1 and 12 is patentable. The circumstance that the Garries patent (main brief, pages 5 and 6) is viewed as being addressed to a different type of vent device makes it quite apparent to us that appellant failed to recognize

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<sup>7</sup>The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).



the express disclosure by Garries of the applicability of the invention to ridge vent type ventilators, that disclosure being noted earlier in this opinion. It follows that, contrary to appellant's position (main brief, page 7, and reply brief, page 2), the applied patents would have clearly been suggestive of their combination, without hindsight reliance upon appellant's disclosure. Again contrary to the view of appellant (main brief, page 7), the modified roof ridge vent of Sells would include an elongated longitudinally extending movable member that extends along a vent part substantially parallel to a ridge board (member). As to the remarks of appellant regarding claim 12 (main brief, pages 7 and 8), it is clear to us that the inclusion of the flapper valves of Garries within compartments defined between an exterior panel and interior baffle would have been suggestive to one of ordinary skill in the art of the positioning of flapper valves in the compartments present in the Sells configuration. The examiner has appropriately pointed out to appellant (answer, page 5) that the test for obviousness is not based upon a determination of whether features of one reference can be bodily incorporated into another to yield a

claimed

invention. Appellant also seeks to distinguish the present invention from the "progressive closing" of the flapper valve of Garries (main brief, pages 8 and 9). As explained, *infra*, claim 1 is not distinguished as argued. As indicated by Garries (column 7, lines 49 through 68), above the wind speed of 30 m.p.h. the flapper valves move upward to progressively close off air passages. Claim 1 calls for movement of the member between inactive and active positions in response to wind in excess of a predetermined ambient wind speed, but does not preclude a progressive closing. The understanding we derive from appellant's specification and, for example, original claim 2, is that the movable member is not an exclusively two-position (passages open or passages closed <sup>8</sup>) member that is responsive to a single critical activation pressure to instantaneously switch the member from its open

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<sup>8</sup>As seen in Figure 3, for example, the member does not seat against the ends of the passages, to close the passages, in the closed or active position (specification, page 2).

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(inactive) position to its closed (active) position, but is a member urged toward its active position under the pressure of the wind.

In summary, this panel of the board has:

reversed the rejection of claims 1, 3, and 12 under 35 U.S.C. § 112, second paragraph, as being indefinite; and

affirmed the rejection of claims 1 and 12 under 35 U.S.C. § 103 as being unpatentable over Sells in view of Garries.

The decision of the examiner is affirmed-in-part.

AFFIRMED-IN-PART

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	)
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	)	
	)	BOARD OF PATENT
JAMES M. MEISTER	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES

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MURRIEL E. CRAWFORD )  
Administrative Patent Judge )

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